

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 5:98-00189

JIMMY O'NEAL BROWN

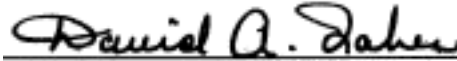
**MEMORANDUM OPINION**

The court is in receipt of a letter from defendant, dated June 19, 2006, asking the court to "honor a Rule 35." Because of the seemingly confidential nature of the letter, it has not been included in the official court file. A sentence reduction under Federal Rule of Criminal Procedure 35 may only be granted upon motion of the government; the court has no power to reduce a defendant's sentence for substantial assistance in the absence of a government motion. See, e.g., United States v. Fraley, 988 F.2d 4, 6 (4th Cir. 1993) ("Rule 35(b) permitted a reduction of sentence only upon the Government's motion for substantial assistance. Thus, under the literal language of Rule 35 as adopted in 1984, district courts had no authority to modify a sentence either sua sponte or upon motion by the defendant."); United States v. Francois, 889 F.2d 1341, 1344 (4th Cir. 1989) (finding logical Congress' decision "to lodge discretion in the prosecutor to make the decision as to whether to file a motion seeking the reduction of a defendant's sentence on the ground of substantial assistance to the government, because the prosecutor is the only individual who knows whether a defendant's cooperation has been helpful.") (internal citations and quotations omitted).

The Clerk is directed to send a copy of this Order to counsel of record, to defendant, and to the Probation Office of this court.

IT IS SO ORDERED this 11th day of July, 2006.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Chief Judge